

REMARKS

This paper includes an Amendment to the claims which supplements the previously filed Preliminary Amendment which had been filed to remove multiple claim dependencies and to clarify claim language. In the present amendment, Claim 1 has been amended to include a more limited particle size (based on the description at page 2, line 10) as well as the limitation of Claim 2; Claim 2 has been amended to recite a limitation found on page 2, lines 29-33; and Claim 12 has been amended to include the entire limitation of Claim 13, thereby requiring the cancellation of Claim 13. No new matter is believed to have been added by these amendments.

The active claims in this application are Claims 1-12, 14 and 16.

ARGUMENTS

The Examiner is requiring restriction to one of the following groups:

Group I: Claims 1-9 and 16, drawn to a phytosterol formulation.

Group II: Claims 10-14, drawn to a method of producing a phytosterol formulation.

Applicants provisionally elect Group I, Claims 1-9 and 16, drawn to a photosterol formulation, with traverse on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctiveness between the identified groups. Also, it has not been shown that a burden exists in searching the claims of the two groups.

Moreover, the MPEP at §803 states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent invention.

Applicants respectfully submit that a search of all of the claims would not impose a serious burden on the Office.

Finally, Applicants respectfully submit that, should the claims of Group I be found allowable, the Office should expand its search to the claims of Group II.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

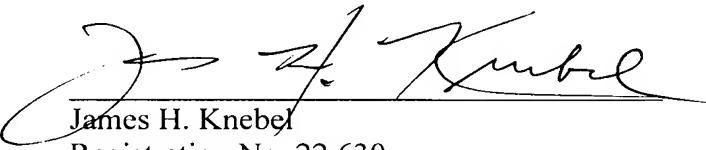
Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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